

AMENDED IN SENATE MAY 20, 2010

AMENDED IN ASSEMBLY MAY 19, 2009

AMENDED IN ASSEMBLY APRIL 16, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 655

Introduced by Assembly Member Emmerson

February 25, 2009

An act to amend Sections 21702.5, 21705, 21707, 21708, and 21709 of, and to repeal ~~Sections 21706 and 21710~~ and add Section 21710 of, the Business and Professions Code, relating to self-service storage facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 655, as amended, Emmerson. Self-service storage facilities.

Existing law, the California Self-Service Storage Facility Act, specifies remedies and procedures for self-service storage facility owners when occupants are delinquent in paying rent or other charges. Under existing law, if an owner sends an occupant a preliminary lien notice by certified mail, the owner may, upon the effective date of the lien, deny the occupant access to the space, enter the space, and remove property to ~~safe-keeping~~ *safekeeping*. However, if the owner sends the preliminary lien notice by first-class mail with certificate of mailing, the owner may not remove the property for at least 14 days following the effective date of the lien. Existing law requires owners to send occupants a notice of lien sale stating that the property will be sold to satisfy the lien after a date not less than 14 days following the date of mailing unless the amount of the lien is paid or the occupant returns a declaration in opposition to lien sale in a specified form. Existing law

specifies procedures for an owner to enforce the lien following receipt of a declaration in opposition to lien sale. Existing law requires that a lien sale be advertised in a newspaper of general circulation in the judicial district where the sale is to be held, or posted in conspicuous places in the neighborhood of the proposed sale, as specified, and provides that prior to a lien sale, any person claiming a right to the goods may pay the amount necessary to satisfy the lien and reasonable expenses incurred for particular actions taken.

This bill would provide that, if the occupant has not paid the full amount specified by the date in the preliminary lien notice, the lien will attach as of that date and the owner may deny the occupant access to the space, enter the space, and remove any property to ~~safe keeping~~ *safekeeping*. The bill would require the owner to send the occupant a notice of lien sale stating that: the property will be sold to satisfy the lien after a specified date that is not less than 21 days from the date of mailing; the occupant may regain full use of the space by paying the full lien amount prior to the specified date; *the occupant may return a Declaration in Opposition to Lien Sale on a specified form*; the occupant may challenge the lien sale by filing an action in a court having jurisdiction as specified; and other information, as specified. ~~The bill would eliminate the occupant's right to return a declaration in opposition to lien sale. The bill would specify procedures for an occupant to challenge a lien sale in court.~~ The bill would provide that prior to any lien sale, any person claiming a right to the goods may pay the amount necessary to satisfy the lien together with one month's rent in advance, in which case the owner would retain the property pending a court order directing the disposition of the property. The bill would also prescribe procedures to be followed if a court order is not obtained.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 21702.5 of the Business and Professions
- 2 Code is amended to read:
- 3 21702.5. (a) Any lien on a vehicle or vessel subject to
- 4 registration or identification under the Vehicle Code which has
- 5 attached and is set forth in the documents of title to the vehicle or
- 6 vessel shall have priority over any lien created pursuant to this
- 7 chapter.

(b) Any lien created pursuant to this chapter on a vehicle or vessel subject to registration or identification under the Vehicle Code shall be enforced in accordance with the provisions of Section 3071 of the Civil Code, in the case of a vehicle, or Section 503 of the Harbors and Navigation Code, in the case of a vessel, and not as prescribed in Sections 21705 to 21711, inclusive.

(c) Any lien created pursuant to this chapter on a vehicle or vessel subject to registration or identification under the Vehicle Code shall not include any charges for rent, labor, or other services incurred pursuant to the rental agreement, accruing more than 60 days after the date the lien imposed pursuant to this chapter attaches, as set forth in Section 21705, and before application is made for authorization to conduct the lien sale pursuant to the requirements of Section 3071 of the Civil Code or Section 503 of the Harbors and Navigation Code.

(d) Any proceeds from a lien sale shall be disposed of pursuant to Section 3073 of the Civil Code, in the case of a vehicle, or Section 507.5 of the Harbors and Navigation Code, in the case of a vessel.

SEC. 2. Section 21705 of the Business and Professions Code is amended to read:

21705. (a) If the notice has been sent as required by Section 21703 and the total sum due has not been paid within 14 days of the termination date specified in the preliminary lien notice, the lien imposed by this chapter attaches as of that date and the owner may do all of the following:

- (1) Deny an occupant access to the space.
- (2) Enter the space.
- (3) Remove any property found therein to a place of ~~safe keeping~~ *safekeeping*.

(b) Upon taking the actions described in subdivision (a), the owner shall send to the occupant ~~a notice of lien sale~~, addressed to the occupant's last known address, and to the alternative address specified in subdivision (b) of Section 21712, by certified mail or by first-class mail, if the owner obtains a certificate of mailing, postage prepaid, ~~that states all~~ *both* of the following:

- (1) *A notice of lien sale that states all of the following:*
- (1)

1 (A) That the occupant's right to use the storage space has
2 terminated and that the occupant no longer has access to the stored
3 property.

4 ~~(2)~~

5 (B) That the stored property is subject to a lien, the current
6 amount of the lien, and that the lien will continue to increase if
7 rent is not paid.

8 ~~(3)~~

9 (C) That the property will be sold to satisfy the lien after a
10 specified date that is not less than 21 days from the date of mailing
11 the notice, *unless the occupant executes and returns by certified*
12 *mail a Declaration in Opposition to Lien Sale in the form set forth*
13 *in paragraph (2).*

14 ~~(4)~~

15 (D) A statement that the occupant may regain full use of the
16 space by paying the full lien amount prior to the date specified in
17 ~~paragraph (3)~~ *subparagraph (C).*

18 ~~(5)~~

19 (E) A conspicuous statement that the occupant may challenge
20 the sale by filing an action in any court having jurisdiction to render
21 a judgment in the amount of the lien.

22 ~~(6)~~

23 (F) That any excess proceeds of the sale over the lien amount
24 and costs of sale will be retained by the owner and may be
25 reclaimed by the occupant or claimed by another person at any
26 time for a period of one year from the sale and that thereafter the
27 proceeds will escheat to the county in which the sale is to take
28 place.

29 (2) *A blank Declaration in Opposition to Lien Sale that shall*
30 *be in substantially the following form:*

31
32 *DECLARATION IN OPPOSITION TO LIEN SALE*

33
34 *You may file suit in any court with jurisdiction of matters in the amount of*
35 *the lien (that may be a small claims court). The suit must be filed within 21*
36 *days of returning this declaration in the jurisdiction where you reside or where*
37 *the self-service storage facility is located, or your property may be sold.*

38
39 I, _____, have received the notice of lien sale
40 (occupant's name)

of the property stored at _____.
(location and space #)

I oppose the lien sale of the property, because (provide a brief explanation
of the reason your property should not be sold):

My address is:

(address) _____

(city) _____

(state) _____

(ZIP Code) _____

(telephone number) _____

I understand that I must file a lawsuit for a hearing on the validity of the lien
no later than 21 days after returning this declaration in opposition to lien sale.
If I do not file suit and serve the self-service storage facility where the property
is stored, the property may be advertised for sale and sold by the self-service
storage facility owner.

I declare under penalty of perjury that the foregoing is true and correct, and
that this declaration was signed by me on _____ at _____ .
(date) (place)

(signature of occupant)

~~SEC. 3. Section 21706 of the Business and Professions Code
is repealed.~~

~~SEC. 4.~~

SEC. 3. Section 21707 of the Business and Professions Code
is amended to read:

21707. After the expiration of the time given in the notice of
lien sale, pursuant to subdivision (b) of Section 21705, or following
the failure of a claimant to pay rent or obtain a court order pursuant
to Section 21709, an advertisement of the sale shall be published
once a week for two weeks consecutively in a newspaper of general
circulation published in the judicial district where the sale is to be
held. The advertisement shall include a general description of the
goods, the name of the person on whose account they are being
stored, and the name and location of the storage facility. If there
is no newspaper of general circulation published in the judicial
district where the sale is to be held, the advertisement shall be

1 posted at least 10 days before the sale in not less than six
2 conspicuous places in the neighborhood of the proposed sale. The
3 sale shall be conducted in a commercially reasonable manner.
4 After deducting the amount of the lien and costs of sale, the owner
5 shall retain any excess proceeds of the sale on the occupant's
6 behalf. The occupant, or any other person having a court order or
7 other judicial process against the property, may claim the excess
8 proceeds, or a portion thereof sufficient to satisfy the particular
9 claim, at any time within one year of the date of sale. Thereafter,
10 the owner shall pay any remaining excess proceeds to the treasury
11 of the county in which the sale was held.

12 ~~SEC. 5.~~

13 *SEC. 4.* Section 21708 of the Business and Professions Code
14 is amended to read:

15 21708. Any person who has a perfected security interest under
16 Division 9 (commencing with Section 9101) of the Commercial
17 Code may claim any personal property subject to the security
18 interest and subject to a lien pursuant to this chapter by paying the
19 total amount due, as specified in the preliminary lien notice, for
20 the storage of the property. Upon payment of the total amount due,
21 the owner shall deliver possession of the particular property subject
22 to the security interest to the person who paid the total amount
23 due. The owner shall not be liable to any person for any action
24 taken pursuant to this section if the owner has fully complied with
25 the requirements of Sections 21704 and 21705.

26 ~~SEC. 6.~~

27 *SEC. 5.* Section 21709 of the Business and Professions Code
28 is amended to read:

29 21709. Prior to any sale pursuant to Section 21707, any person
30 claiming a right to the goods may pay the amount necessary to
31 satisfy the lien together with one month's rent in advance. In that
32 event, the goods shall not be sold, but shall be retained by the
33 owner pending a court order directing the disposition of the
34 property. If a court order is not obtained within 30 days following
35 the date of the payment pursuant to this section, the claimant shall
36 pay the owner the monthly rental charge for the space where the
37 property is stored pursuant to the terms of the rental agreement. If
38 the claimant does not pay this rent, the owner may sell or dispose
39 of the personal property in accordance with Section 21707. The
40 owner shall have no liability for the sale or other disposition of

1 the personal property to any claimant who fails to secure a court
2 order or pay the required rental charge as provided in this section.

3 ~~SEC. 7.~~

4 SEC. 6. Section 21710 of the Business and Professions Code
5 is repealed.

6 SEC. 7. *Section 21710 is added to the Business and Professions*
7 *Code, to read:*

8 *21710. If a Declaration in Opposition to Lien Sale is received*
9 *by the owner prior to the date set forth in the notice of lien sale,*
10 *the owner may enforce the lien only as follows:*

11 *(a) The owner shall not sell the property for 30 days from the*
12 *date of receipt of the Declaration in Opposition to Lien Sale.*

13 *(b) If the occupant files a complaint challenging the lien sale*
14 *in an appropriate court and serves the owner with a copy of the*
15 *complaint within 30 days of the owner's receipt of the Declaration*
16 *in Opposition to Lien Sale, the owner shall not sell the property*
17 *until the court issues a judgment on the occupant's complaint in*
18 *favor of the owner's lien.*

19 *(c) If the occupant does not serve the owner in accordance with*
20 *subdivision (b) or if the owner is granted a judgment in favor of*
21 *the lien, the owner may advertise the goods for sale and sell the*
22 *property as provided in Section 21707.*